





1 2005, through January, 2007. MEGA asserts it has produced both of those reports to  
2 Plaintiffs.

3 MEGA argues that Plaintiffs are mistaken about the existence of a final and  
4 comprehensive 2007 Report, just as they are in claiming that the Examiners "ordered"  
5 MEGA to produce it to them. In fact, the Examiners accepted MEGA's contention that any  
6 reports by its consultants are privileged and confidential. (Luna Decl. ¶ 9.) Thus, the  
7 Examiners decided that an overview of the report would suffice. MEGA has produced the  
8 overview to Plaintiffs. The Court finds this contention by MEGA to be ambiguous, in that it  
9 implies that a full report was prepared for MEGA but that MEGA did not produce it to the  
10 Examiners on the grounds of privilege, and therefore withholds it from production to  
11 Plaintiffs.

12 MEGA, in the course of the parties' discussions regarding this discovery, offered to  
13 produce a 2009 report or the index to the report so Plaintiffs could request portions of it  
14 related to claims handling. This was a 182 page report entitled "A Report Card on  
15 Compliance with the Performance Standards Set Forth in the Regulatory Settlement  
16 Agreement" dated November 9, 2009, prepared by the Schacht Group and SMART  
17 Business Advisory and Consulting LLC. (Luna Decl at 2)

18 MEGA asserts that its counsel explained to Plaintiffs' counsel that it had not located  
19 the final and comprehensive 2007 Report that Plaintiffs believed existed, and offered to  
20 provide Plaintiffs with a declaration once MEGA concluded its search or confirmed that the  
21 2007 Report does not exist. MEGA explained that the only 2007 consultant's report it had  
22 located regarding claims handling was a draft report that appeared to be incomplete. At no  
23 time did MEGA's counsel say that MEGA had located the 2007 Report, as Plaintiffs now  
24 claim. (Pls' letter at ¶. 2-3.) MEGA agreed to produce the draft report to allow Plaintiffs to  
25 see for themselves that it was not the report they were seeking. MEGA then emailed the  
26 report and other documents to Plaintiffs.

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1 MEGA has repeatedly advised Plaintiffs that it cannot locate the final,  
2 comprehensive 2007 Report that Plaintiffs have repeatedly argued must exist, and it has  
3 now confirmed that PwC did not prepare such a report. (See Luna Decl. ¶ 9.)

4 MEGA argues that it cannot be compelled to produce a report that does not exist,  
5 nor should it be sanctioned for its inability to do so. MEGA requests the Court deny  
6 Plaintiffs' request for an order for further compliance, another 30(b)(6) deposition, or  
7 sanctions.

8 **Conclusion and Order**

9 In the interests of justice, this Court will provide MEGA with an opportunity to file a  
10 sworn declaration that no document responsive to Plaintiffs' requests and subject to this  
11 Court's March 31 order exists which has not been produced to Plaintiffs. Such a declaration  
12 will preclude MEGA from relying on any such document or its content in motions or at trial.  
13 The Court will also give MEGA an opportunity to be heard on the issue of whether it has  
14 failed to comply with the Court's previous orders and, if so, if its failure merits sanctions as  
15 requested by Plaintiffs. The matter will be heard on the Court's calendar on August 4, 2010  
16 at 9:30 a.m.

17 IT IS SO ORDERED.

18 DATED: July 14, 2010

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22 JAMES LARSON  
23 United States Magistrate Judge

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